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Supreme Court, U.S.
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In the
Supreme Court of the United States

OCTOBER TERM, 1970

70-17

No. ~~804~~

THOMAS S. EISENSTADT, AS HE IS SHERIFF OF SUFFOLK COUNTY, MASSACHUSETTS,
APPELLANT

v.

WILLIAM R. BAIRD,
APPELLEE

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

MOTION TO DISMISS OR AFFIRM

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MOTION TO DISMISS OR AFFIRM

Pursuant to Rule 16 of the Rules of the Supreme Court of the United States the Appellee moves the Court to dismiss the appeal herein on the ground set forth below, or to affirm the judgment sought to be reviewed on this appeal on the ground that it is manifestly based on decisions of this Court.

Statement of the Case

This is an appeal under 28 U.S.C. §1254(2) by the State of Massachusetts from a decision of the United States Court of Appeals for the First Circuit in *Baird* v. *Eisenstadt*, as he is Sheriff of Suffolk County, Massachusetts, 492 F. 2d 1398 (1970), which held that the Massachusetts statute, Mass. G. L. c. 272 §21, is unconstitutional on its face as being arbitrary and grossly discriminatory and as having no legitimate legislative purpose. It was further held that the petitioner (appellee here), having been jailed for a direct violation of the statute, has standing to challenge the constitutionality of this statute.

THIS CASE DOES NOT PRESENT ANY SUBSTANTIAL QUESTION OF LAW OR FACT FOR DETERMINATION BY THE COURT.

The decision of the United States Court of Appeals for the First Circuit is a clear application of the Constitutional principles laid down by this Court in the decisions of *Nebbia* v. *New York*, 291 U.S. 502 (1934), *Meyer* v. *Nebraska*, 262 U.S. 390 (1923), and *Griswold* v. *Connecticut*, 381 U.S. 479 (1965).

The United States Court of Appeals for the First Circuit held that the Massachusetts statute making it unlawful to deliver any drug or article for prevention of conception, except in case of a registered physician or pharmacist who could lawfully prescribe and furnish such drugs or articles to a married person (Mass. G. L. c. 272 §21), is void because it does not bear a real and substantial relationship to public health, safety, morals, or the general welfare; and it was further held that if the statute can be thought of as bearing a substantial relationship to a proper purpose, it is arbitrary and discrimina-

tory "because of the statute's total exclusion of the unmarried, and because of its palpable overbreadth with respect to the married." As for the claim that the challenged statute bears a substantial relationship to morality, Chief Justice Aldrich of the United States Court of Appeals for the First Circuit in the instant case wrote that such a view of morality ". . . conflicts with fundamental human rights." And the Justice relied on the various opinions in *Griswold* v. *Connecticut*, 381 U.S. 479 (1965) in support of this proposition.

Conclusion

The decisions of this Court cited above are controlling as to all issues sought to be presented by this appeal. Accordingly, the judgment of the United States Court of Appeals for the First Circuit should be affirmed.

WHEREFORE, Appellee moves the Court, for the reason stated, to affirm the judgment from which Appellant prosecutes his appeal and, in the alternative, to dismiss the same.

Respectfully submitted,

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